



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2007-0989; FRL-9955-03-Region 6]

#### Approval and Promulgation of Implementation Plans; Oklahoma; Revisions to Minor New Source Review Permitting Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve severable portions of revisions to the Oklahoma New Source Review (NSR) State Implementation Plan (SIP) submitted by the State of Oklahoma on February 14, 2002 (the February 14, 2002, SIP submittal). This action addresses revisions to the Oklahoma Administrative Code (OAC), Title 252, Chapters 4 and 100, concerning the State's Minor New Source Review air permitting program. Many revisions are administrative in nature and modify redundant or incorrect text within the SIP. The revisions also include renumbered or codified portions of the SIP and new sections that incorporate Federal rules. This rulemaking is being taken in accordance with section 110 of the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before **Insert date 30 days after date of publication in the Federal Register**.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2007-0989, at <http://www.regulations.gov> or via email to [barrett.richard@epa.gov](mailto:barrett.richard@epa.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed

from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Rick Barrett, 214-665-7227, [barrett.richard@epa.gov](mailto:barrett.richard@epa.gov). For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

**FOR FURTHER INFORMATION CONTACT:** Mr. Rick Barrett, 214-665-7227, [barrett.richard@epa.gov](mailto:barrett.richard@epa.gov). To inspect the hard copy materials, please schedule an appointment with Rick Barrett or Mr. Bill Deese at 214-665-7253.

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us,” or “our” means the EPA.

## **I. Background**

**II. Oklahoma's Program for Minor New Source Review****III. EPA's Evaluation of Proposed SIP Revisions****IV. Proposed Action****V. Incorporation by Reference****VI. Statutory and Executive Order Reviews****I. Background**

The SIP is a set of air pollution regulations, control strategies and technical analyses developed by the state, to ensure that the state meets the National Ambient Air Quality Standards (NAAQS). These ambient standards are established under section 109 of the Act and they currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. The SIP is required by section 110 of the Act and can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations. EPA has promulgated implementing regulations for the preparation, adoption, and submittal of SIPs. 40 CFR Part 51.

The Clean Air Act at section 110(a)(2)(C) requires states to develop and implement permitting programs (called new source review or NSR) for attainment and nonattainment areas; these NSR programs cover both construction and modification of stationary sources.<sup>1</sup> Each SIP must include legally enforceable procedures that enable the state to determine whether the construction or modification of a stationary source will result in a violation of applicable portions

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<sup>1</sup> The definition of "stationary source" or "source" used herein is equivalent to ODEQ's definition of "facility," as defined at OAC 252:100-1-3.

of a control strategy or the interference with the attainment or maintenance of a NAAQS. 40 CFR 51.160. EPA rules set forth detailed requirements for the development of approvable SIP provisions related to the construction of new major stationary sources and major modifications to existing major stationary sources (Major NSR) located in both attainment and nonattainment areas. See, e.g., 40 CFR 51.165-166; however, the requirements for the development of approvable SIP provisions related to the construction and modification of minor sources and minor modifications to existing major stationary sources (Minor NSR) are governed by the more general provisions of 40 CFR 51.160-51.164. EPA has previously approved rules submitted by Oklahoma to implement the Major NSR permitting program, including revisions to rules that are also the subject of this rulemaking, but only as those rules relate to the Major NSR program. See, e.g., 75 FR 72695, November 26, 2010. The next section provides a description of Oklahoma's Minor NSR program and the portions of the February 14, 2002 SIP submittal related to Oklahoma's Minor NSR program that are being acted upon in this proposed rulemaking.

Some severable provisions submitted by the State of Oklahoma on February 14, 2002, are not addressed in today's action. For these provisions, the EPA has severed the submitted provisions from today's proposed rulemaking and will address them at a later date. The table below and the TSD accompanying our rulemaking identifies the submitted provisions that we are proposing to approve and those provisions we are neither evaluating nor acting upon in this proposed rulemaking.

## **II. Oklahoma's Program for Minor New Source Review**

**A. Overview** - The EPA-approved Oklahoma SIP rules comprising Oklahoma's Minor New Source Review (NSR) program may be found in Regulation 1.4, Air Resources Management

Permits Required. A revision to Regulation 1.4 was approved by EPA on November 8, 1999 (64 FR 60683) as part of the Oklahoma visibility SIP. The EPA's November 26, 2010 rulemaking mentioned above also revised Regulation 1.4 of the Oklahoma SIP, but only as it applied to Oklahoma's Major NSR program. See 75 FR 72695 and OAC 252:100-8. Oklahoma's Minor NSR program has been significantly modified and expanded. Elements of Oklahoma's Minor NSR program may now be found in OAC 252:4-1 (General Provisions), OAC 252:4-7 (Environmental Permit Process), Appendix C (Permitting Process Summary), OAC 252:100-5 (Registration, Emission Inventory and Annual Operating Fees), OAC 252:100-7 (Permits for Minor Facilities), Appendix H (De Minimis Facilities) and OAC 252:100-8 (Permits for Part 70 Sources). Those rules before us for action are limited to Minor NSR, and the effect of our rulemaking action, if finalized, will be the removal of Regulation 1.4 from the Oklahoma SIP (except as it applies to Minor NSR permitting under OAC 252:100-8) and the incorporation of specific provisions in the other regulations referenced above into the Oklahoma SIP.

**B. Types of Minor NSR Permitting Actions** - Oklahoma divides its permitting program between "Permits for Minor Facilities" found in OAC 252:100-7, and "Permits for Part 70 Sources" which includes Major New Source Review (NSR) Sources, found in OAC 252:100-8. Oklahoma's February 14, 2002 SIP submittal includes OAC 252:100-7 which establishes three types of construction and operating permits for minor facilities: a permit by rule (PBR), a general permit, and an individual permit. The PBR program applies to facilities emitting less than 40 tons per year (TPY) of any regulated pollutant, in an industry group for which a rule has been promulgated. The general permitting program generally applies to facilities emitting between 40 TPY and 100 TPY, in an industry group for which a general permit has been issued. Minor

facilities which do not qualify for either of these shall obtain an individual permit. De minimis facilities are those facilities which emit less than 5 TPY and are not required to obtain a permit. As discussed later, Oklahoma's Minor NSR Program also applies to minor modifications of existing major stationary sources, covered by OAC 252:100-8, although we are not proposing action on the Minor NSR-related rules in OAC 252:100-8 at this time. We also note that OAC:252 100-7 and OAC:252:100-8 have requirements for both construction and operating permits; however, only the construction permitting requirements are required under the CAA and 40 CFR Part 51, Subpart I.

OAC 252:100-7 also deletes the lower limit of 5 TPY for PBR facilities. This allows facilities subject to New Source Performance Standards (NSPS) with emissions less than 5 TPY to apply for a PBR instead of obtaining an individual permit.

A PBR or general permit may be issued if there are a sufficient number of facilities that have similar operations, emissions, and activities that are subject to the same standards, limitations, and operating and monitoring requirements. OAC 252:100-7 Part 9 and OAC 252:100-7 Part 3 outline the criteria required to qualify for these permits: 1) A facility may apply for a PBR if the facility's actual emissions are less than 40 TPY, except hazardous air pollutants (HAPs); the facility does not emit or have the potential to emit 10 TPY or more of any single hazardous air pollutant (HAP) or 25 TPY or more of any combination of HAPs; the ODEQ must have established a permit by rule for the industry; the facility certifies that it will comply with the applicable PBR; and the facility is not operated in conjunction with another facility or source that is subject to air quality permitting; and 2) A minor facility may apply for a general permit if its actual emissions are less than 100 TPY of each regulated air pollutant, except for HAPs; the facility does not emit or have the potential to emit 10 TPY or more of any single HAP or 25 TPY

or more of any combination of HAPs; and ODEQ has issued a general permit for the industry.

In general, a facility may apply for an individual permit if the facility's actual emissions are less than 100 TPY; the facility does not emit or have the potential to emit 10 TPY or more of any single hazardous air pollutant (HAP) or 25 TPY or more of any combination of HAPs; the facility submits an application form from the ODEQ that provides all data and information required by OAC 252:100-7, such as site information, process description, emission data; and the facility provides information necessary for any required BACT<sup>2</sup> determination, modeling and sampling point data. Individual permits may be applied for even if the facility qualifies for a PBR or a general permit.

**C. Permitting Practice and Procedures for Minor Facilities and Minor Revisions - OAC 252:4 (Rules of Practice and Procedure)** provides administrative procedures for permit issuance, public notice, and administrative proceedings. OAC 252:4 was adopted to meet the requirements of the Oklahoma Administrative Procedures Act, which requires each State agency to adopt rules describing its organization, method of operation and methods by which the public may obtain or provide information to the agency. These rules also specify the requirements of all formal and informal procedures available, including a description of forms and instructions.

OAC 252:4-1 (General Provisions) includes the practices and procedures of the Environmental Quality Board, Advisory Councils, and the Department of Environmental Quality; the availability of records; and fees for copying, faxing, records search and mail

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<sup>2</sup> See definition of "Best Available Control Technology" or "BACT" at OAC 252:100-7.1.1 as it applies to Oklahoma's Minor NSR program, as compared to the BACT requirements for Oklahoma's Major NSR program at OAC 252:100-8-34, as previously approved by EPA into the Oklahoma SIP (75 FR 72695, November 26, 2010).

services.

OAC 252:4-7 (Environmental Permit Process) includes Part 1 (The Process) and Part 3 (Air Quality Division Tiers and Time Lines). Representative sections of Part 1 include OAC 252:4-7-2 (Preamble), OAC 252:4-7-13 (Notices) and OAC 252:4-7-15 (Permit issuance or denial). Representative sections of Part 3 include OAC 252:4-7-31 (Air quality time lines) and OAC 252:4-7-33 (Air quality applications – Tier II). OAC 252:4-7 is briefly discussed in more detail below.

The Preamble of OAC 252:4-7 is the introductory section, referencing the Uniform Environmental Permitting Act (UEPA), which requires that DEQ fit licenses, permits, certificates, approvals and registrations into a category, or Tier, established under the uniform environmental permitting rules. The UEPA was created to streamline the permitting process and is located in Oklahoma Statute Title 27A Environment and Natural Resources, Chapter 2: Oklahoma Environmental Quality Code, Sections 1 through 12. Tier I are administrative decisions made by a technical supervisor without public participation, aside from the landowner. Tier II are administrative decisions made by the Division Director with some public participation, including notice to the public, and the opportunity for a public meeting and public comment. Tier III are administrative decisions made by the Executive Director with extensive public participation, e.g., an administrative evidentiary hearing.

The UEPA requires an applicant to give notice. Notice requirements include providing notice to the landowner if the applicant does not own the property, providing a draft notice for approval to DEQ prior to publication, and proof of publication; these are in addition to the notice requirements for permits under the UEPA.

OAC 252:4, Appendix C (Permitting Process Summary) lists the permit processing steps



required under each of the three Tiers. As explained below, Tier I covers permitting for minor facilities and minor revisions to facilities.

**D. Oklahoma's Permitting Regulations and Revisions Submitted in the February 14, 2002 SIP Submittal** - OAC 252:100 (Air Pollution Control) provides, in part, details regarding permitting fees, permitting for minor facilities, permitting for Part 70 Sources, and Prevention of Significant Deterioration (PSD) requirements for major stationary sources.

Oklahoma's February 14, 2002 SIP submittal includes three separate revisions to OAC 252:100-5 (Registration, Emission Inventory and Annual Operating Fees). The first revision to OAC 252:100-5 was adopted by Oklahoma in 1998 and includes requirements to file an emission inventory, formerly located in OAC 252:100-7; requirements to pay annual operating fees, formerly located in OAC 252:100-7 and OAC 252:100-8; and increases to the annual operating fees for minor facilities and non-Part 70 sources. The second revision to OAC 252:100-5 was adopted by Oklahoma in 1999, to modify the base annual operating fee for minor facilities and the annual operating fee for Part 70 sources. The third revision to OAC 252:100-5 was adopted by Oklahoma in 2000, allowing the agency to bill annual operating fees on a flexible schedule and providing edits that define billing dates and identifying how errors will be handled. The changes allow fees to be based on the most recent emissions data and require inventories to be submitted prior to March 1. Miscellaneous edits delete redundant text and clarify text; the revisions are not substantive.

Oklahoma's February 14, 2002 SIP submittal also included several revisions to OAC 252:100-7 (Permits for Minor Facilities). As stated in Part I above, the EPA took no action on OAC 252:100-7 in Oklahoma's 1994 SIP submittal, so Regulation 1.4 remained in the SIP.

Today's rulemaking proposes to approve revisions to eliminate Regulation 1.4 from the Oklahoma SIP, with the exception of its applicability to Minor NSR permitting under OAC 252:100-8, while also taking action on identified revisions to OAC 252:100-7 that have been adopted by the State since the EPA's November 8, 1999 rulemaking.

A brief discussion of each of the revisions related to what is now OAC 252:100-7 (hereinafter "Subchapter 7"), as submitted by Oklahoma on February 14, 2002, for EPA review and approval into the Oklahoma SIP, is presented below. Please note that rules adopted by Oklahoma in the first five revisions listed below are superseded by the last three revisions listed, and they are provided for background information purposes.

The first set of revisions was adopted by Oklahoma effective May 6, 1988, and affect the permitting regulations for new and existing sources of air pollution by increasing construction and operating permit fees for new sources and requiring all permits to be renewable on an annual basis. Renewal fees are assessed annually on all regulated sources.

In 1990, the State Legislature passed the Oklahoma Administrative Procedures Act which mandated a common format for Oklahoma's rules and regulations. The Oklahoma State Department of Health was assigned to Title 310 in the OAC, the Air Pollution Control Rules were assigned to Chapter 200, and each regulation was assigned to a Subchapter. Regulation 1.4 became OAC Title 310, Chapter 200, Subchapter 7 or OAC 310:200-7, and was renamed "Permits." This recodification of Regulation 1.4 to OAC 310:200-7 and change in fee provisions were the second revisions to Subchapter 7, adopted by Oklahoma and effective June 1, 1993.

In 1993, the Oklahoma Air Quality Service became the Air Quality Division (AQD) of the newly created ODEQ. As a result, the Air Pollution Control Rules were recodified to OAC 252:100, adopted by Oklahoma effective May 26, 1994, and submitted by the Governor of

Oklahoma to the EPA as a revision to the Oklahoma SIP on May 16, 1994.

The fourth set of revisions to Subchapter 7 was adopted by Oklahoma, effective July 1, 1996, and affects operating time limits for permitted and unpermitted minor sources.

The fifth set of revisions to Subchapter 7 was adopted by Oklahoma, effective June 2, 1997, and excludes total suspended particulates (TSP) from being considered as regulated air pollutants for purposes of fee calculation only.

The sixth set of revisions to Subchapter 7 was adopted by Oklahoma, effective June 25, 1998. These revisions incorporate a new permit classification system that includes environmental impact, emission levels, and source changes in Oklahoma. Other changes remove requirements for Part 70 and major sources (which are relocated to Subchapter 8); define and exempt “de minimis” facilities (less than 5 tons); revise minor permit application fees; and introduce the PBR, general and individual permits.

The seventh set of revisions to Subchapter 7 was adopted by Oklahoma, effective June 11, 1999, and includes modifications to language applicable to de minimis facilities, PBR, and general permits. Additional changes increase various application fees for minor facilities.

The eighth set of revisions to Subchapter 7 was adopted by Oklahoma, effective June 1, 2001. Provisions of Regulation 1.4 were moved into OAC 252:100-7-2, requiring applications be signed by the applicant; the signature constitutes an implied agreement that the applicant shall be responsible for assuring construction or operation, as applicable, in accordance with the application and OAC 252:100; and the applicant’s duty to correct any errors or omissions on the application.

In addition to the revisions to OAC 252:100-7 discussed above, Oklahoma’s February 14, 2002 SIP submittal includes revisions to OAC 252:100, Subchapter 8 (Permits for Part 70

Sources). The State reasons that it would be difficult to separate the Subchapter 8 rules that are based solely on Title V program requirements from those Subchapter 8 rules that are based upon SIP requirements, without omitting essential requirements. As such, Oklahoma submitted all of the Subchapter 8 rule revisions noted herein for approval into the Oklahoma SIP.

Oklahoma's February 14, 2002 SIP submittal revises OAC 252:100-8, Part 1 (General Provisions), OAC 252:100-8, Part 5 (Permits for Part 70 Sources), OAC 252:100-8, Part 7 (Prevention of Significant Deterioration (PSD) Requirements for Attainment Areas), and OAC 252:100-8, Part 9 (Major Sources Affecting Nonattainment Areas). These sections include general information, including eligibility criteria for general and individual permits; sources subject to the permit requirements and permit contents; administrative requirements, including format, transmission of information, review and petitions; applicability of new sources to NSR requirements; demonstration of best available control technology and evaluation of air quality impact. As stated in Section I discussion above, the EPA's November 26, 2010 rulemaking (75 FR 72695) approved OAC 252:100-8, Parts 7 and 9 as well as OAC 252:100-8, Parts 1 and Part 5 (as they apply to sources subject to the Major NSR program requirements) into the Oklahoma SIP. EPA considers the Minor NSR provisions in Subchapter 8 for Part 70 sources severable from the Subchapter 7 Minor NSR requirements for minor facilities. We also note that additional SIP submittals with Subchapter 8 revisions are currently before the EPA for action. In today's proposal, the EPA is not proposing approval of those portions of OAC 252:100-8, Parts 1 and 5 as they apply to Oklahoma's Minor NSR permitting program; the EPA will address the Minor NSR program aspects of OAC 252: 100-8 in a separate action.

Finally, OAC 252:100, Appendix H (De Minimis Facilities) is referenced in Section 252:100-7-1.1. Appendix H lists the facilities that qualify as De Minimis, such as agricultural

(lawn care), woodworking (portable wood chipping operations), office/janitorial, and cleaning/surface preparation (cold degreasing operations).

Additional discussion of the above SIP revisions is located below and also in the Technical Support Document (TSD) which is in the docket for this proposed rule.

### **III. EPA Evaluation of Proposed SIP Revisions**

**A. EPA Evaluation of Requirements for Minor NSR** – As stated above, the EPA regulations governing the criteria that states must satisfy for EPA SIP approval of regulations specific to Minor NSR programs are contained in 40 CFR Sections 51.160–51.164. More specifically, the provisions of a Minor NSR program must include legally enforceable procedures that enable the permitting authority to determine whether the construction or modification of a source will result in a violation of applicable portions of the control strategy or interfere with attainment or maintenance of a NAAQS. 40 CFR 51.160(a). To accomplish this goal, the state’s Minor NSR program must include the means by which the permitting authority will prevent such construction or modification if it would result in a violation of applicable portions of a control strategy or interfere with the attainment or maintenance of a NAAQS. 40 CFR 51.160(b). Other requirements for an approvable Minor NSR program are contained in 40 CFR 51.160(c) – (f) as well as in 40 CFR 51.161 – 51.164. As discussed in Section II above, elements of Oklahoma’s Minor NSR program may be found in both OAC 252:100-7 (Permits for Minor Facilities) as well as in OAC 252:100-8 (Permits for Part 70 Sources); however, the EPA will not be taking action on the Minor NSR program elements located in OAC 252:100-8 at this time. Regulation 1.4 of the currently approved SIP will continue to apply to the minor NSR program as it applies to sources subject to Part 70 (See OAC 252:100-8). The TSD which

accompanies this proposed rulemaking contains a detailed review of Oklahoma's February 14, 2002 SIP submittal and how the submitted regulations being acted upon in this proposed rulemaking meet the requirements for an approvable Minor NSR program. A summary of our evaluation is provided below.

Under the permitting requirements for minor facilities in OAC 252:100-7 Permits for Minor Facilities, no person may commence construction or modification of any minor facility, may operate any new minor facility, or may relocate any minor portable source without obtaining a permit from ODEQ, except for de minimis facilities.

The provisions in OAC 252:100-7 Permits for Minor Facilities establish both an initial construction permit and a subsequent operating permit. Under OAC 252:100-7-15(b) three types of construction permits are available: a permit by rule (PBR), a general permit, and an individual permit. These provisions allow ODEQ to develop and issue PBR, general, and individual minor source permits. Minor NSR sources may seek authorization under the PBR or general permit, in lieu of an individual permit, if they meet the requirements of the PBR provisions or general permitting program and the specific requirements of each PBR or general permit. Regardless of the type of permit applied for, the applicant must provide specific information which is evaluated by the ODEQ both in the application process and on an ongoing basis. For example, OAC 252:100-7-15(d) requires that all three types of minor construction permits contain provisions that: (1) require the permittee to comply with all applicable air pollution rules, (2) prohibit the exceedance of ambient air quality standards, and (3) may establish permit conditions and limitations as necessary to assure compliance with all rules. The specific PBR or general permit rule and application form requires that data and information be provided which includes, but is

not limited to, process description, emission data, any required BACT<sup>3</sup> determination, modeling and sampling point data. Under OAC 252:100-7-18(d)(1), Operating permit conditions, the emission limitations established and made a part of the construction permit are incorporated into and become enforceable limitations of the subsequently issued operating permit. Under OAC 252:100-5-2.1 Emission Inventory, any facility that is a source of air emissions shall submit a complete emission inventory annually, except every 5 years for a PBR with emissions less than 5 tons per year. Therefore, as required by the provisions of Chapter 4 and Chapter 100, the PBR, general and individual permits must contain terms and conditions that assure sources authorized via the construction permit and subsequent operating permit will meet all applicable requirements under the Act (e.g., NSR, NSPS, NESHAP) and will not cause or contribute to an exceedance of the NAAQS. Also, see OAC 252:4-7-32 and OAC 252:100-7-15(d)(2).

As discussed above, the EPA believes that provisions of OAC 252:100-7 satisfy the requirements of 40 CFR 51.160(a) and enable the permitting authority to determine whether the construction or modification will result in a violation of applicable portions of the control strategy or interfere with attainment or maintenance of a national ambient air quality standard. Further, these provisions satisfy the requirements of 40 CFR 51.160(d) which require that approval of any construction or modification must not affect the responsibility of the owner or operator to comply with applicable portions of the control strategy.

Based on our evaluation, we propose to find that the severable portions of the Minor NSR program requirements in OAC 252:4-1 (General Provisions), OAC 252:4-7 (Environmental Permit Process), Appendix C (Permitting Process Summary), OAC 252:100-5 (Registration,

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<sup>3</sup> *Id.*

Emission Inventory and Annual Operating Fees), OAC 252:100-7 (Permits for Minor Facilities) and Appendix H are approvable as meeting CAA requirements for a Minor NSR program. These severable Minor NSR permit provisions provide for the necessary procedures and applicable requirements for approvable Minor NSR programs. Additional details regarding our evaluation are found in the TSD accompanying this proposed rulemaking. The TSD is available in the docket and from the EPA Region 6 office.

**B. CAA 110(l) Analysis** - Each revision to an implementation plan submitted by a state under the Clean Air Act shall be adopted by such state after reasonable notice and public hearing. ODEQ adopted the proposed revisions after reasonable notice and public hearing. CAA section 110(l) also states that the Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in CAA section 171), or any other applicable requirement of the Act. For purposes of the analysis under CAA section 110(l), we have taken into account the overall effect of the revisions included in this action. Given that these revisions primarily concern recodified portions of the Oklahoma SIP, new sections that incorporate Federal and state rules, deletions of duplicative and outdated rules, and edits that simplify text and correct errors, we propose to find that the overall effect of the revisions would improve the Oklahoma SIP, and our approval would not interfere with any CAA requirement.

EPA's review of the proposed revisions and appendix, in accordance with section 110 of the CAA, forms the basis for demonstrating noninterference with applicable CAA requirements for attainment, including violation of any NAAQS or contribution to a PSD increment exceedance. The TSD contained in the docket for this action contains our review of the



individual sections for each regulation associated with this proposed SIP revision rulemaking. Our review demonstrates that the changes made to the Oklahoma rules being acted upon in today's proposed rulemaking reflect either the same regulatory language or are consistent with the requirements found in the federal rules related to Minor NSR SIP programs. The TSD also contains references to supporting technical documentation in the docket regarding specific aspects of the proposed revisions, including Appendix H. De Minimis Facilities.

In its review of the proposed revisions and appendix identified above, the EPA also took into consideration the following factors. There is no currently designated nonattainment area for any air pollutant in the State of Oklahoma. The entire State is currently in attainment for all criteria pollutants, and has been since the original promulgation and subsequent revisions of the NAAQS and PSD increments. Also, air quality has generally remained at the same level or has steadily improved both statewide and in the largest metropolitan statistical areas of Oklahoma City and Tulsa, as shown in the EPA's "Air Quality System" repository, and the EPA's "Air Quality Trends by City" monitoring data averages from 1990 through 2015. Furthermore, since the list of exempted source categories (Appendix H) included in the proposed revisions have historically operated without coverage by an air permit and there are no anticipated increases in emissions or in the number of these types of sources resulting from the approval of the de minimis exemption list into the Oklahoma SIP, the EPA finds there is a low possibility of adverse impacts on ambient air quality from the emission sources and activities included in Appendix H. Our conclusion is supported by ambient air monitoring trends in Oklahoma, as more specifically discussed in the TSD associated with this proposed rulemaking. Our noninterference determination and proposed approval of OAC 252:100, Appendix H is consistent with our assessment of the environmental significance associated with emissions covered by this

Appendix. The ODEQ has been implementing the Minor NSR air permitting program based on the codification of their permitting policy without any indication that the de minimis facilities listed in Appendix H have interfered with attainment or any other applicable requirement of the CAA. Therefore, the EPA proposes to approve Appendix H into the Oklahoma SIP since it meets CAA requirements for Minor NSR and the requirements of CAA section 110.

Based on historical trends and supporting air quality monitoring data documenting air quality improvements throughout the State, we believe the proposed Minor NSR SIP revision meets the requirements of CAA section 110(l) and is consistent with the provisions of 40 CFR 51.160(e) which provide state agencies the latitude to define the types and sizes of facilities, buildings, structures, or installations subject to review. We believe the implementation of these rules will not interfere with any applicable requirement concerning attainment, reasonable further progress, maintaining PSD increment, or any other applicable requirement of the CAA.

Accordingly, the EPA is proposing approval of these revisions under section 110 of the Act. Further discussion of CAA section 110(l) is contained in the TSD for this proposed rule. The TSD is available in the docket and from the EPA Region 6 office.

#### **IV. Proposed Action**

We are proposing to approve severable portions of revisions relating to the Minor NSR program of the Oklahoma SIP, as submitted to the EPA on February 14, 2002. The revisions include portions of OAC 252:4, Rules of Practice and Procedure, and OAC 252:100, Air Pollution Control. These revisions replace the corresponding regulations in the Oklahoma SIP found in Regulation 1.4, Air Resources Management Permits Required, with the exception of the continued applicability of Regulation 1.4 to Minor NSR permitting under OAC 252:100-8. EPA

has made its determination in accordance with the CAA and the EPA regulations at 40 CFR 51.160 - 51.164. Therefore, under section 110 of the Act, and for the reasons presented above and in our accompanying TSD, the EPA proposes approval of severable portions of revisions to the Oklahoma Minor NSR SIP identified in Table 1 below.

<b>Table 1: Revisions to the Oklahoma SIP Proposed for Approval</b>			
<b>Section</b>	<b>Title</b>	<b>Effective Date</b>	<b>Submittal Date</b>
CHAPTER 4 (OAC 252:4). RULES OF PRACTICE AND PROCEDURE			
Subchapter 1. General Provisions			
OAC 252:4-1-1	Purpose and Authority	June 11, 2001	February 14, 2002
OAC 252:4-1-2	Definitions	June 11, 2001	February 14, 2002
OAC 252:4-1-3	Organization	June 11, 2001	February 14, 2002
OAC 252:4-1-4	Office hours and locations; communications	June 11, 2001	February 14, 2002
OAC 252:4-1-5, except (a) 2 <sup>nd</sup> sentence, which EPA will address in a separate action	General Provisions, Availability of a record	June 11, 2001	February 14, 2002
OAC 252:4-1-6	Administrative fees	June 11, 2001	February 14, 2002
OAC 252:4-1-7	Fee credits for regulatory fees	June 11, 2001	February 14, 2002
OAC 252:4-1-8	Board and Councils	June 11, 2001	February 14, 2002
OAC 252:4-1-9	Severability	June 11, 2001	February 14, 2002
Subchapter 7. Environmental Permit Process			
OAC 252:4-7-1	Authority	June 11, 2001	February 14, 2002
OAC 252: 4-7-2, except 2 <sup>nd</sup> sentence, which EPA will address in a separate action	Preamble	June 11, 2001	February 14, 2002
OAC 252: 4-7-3	Compliance	June 11, 2001	February 14, 2002
OAC 252:4-7-4, except (a) 1 <sup>st</sup> sentence, which EPA will address in a separate action.	Filing an application	June 11, 2001	February 14, 2002
OAC 252:4-7-5	Fees	June 11, 2001	February 14, 2002
OAC 252: 4-7-6	Receipt of Applications	June 11, 2001	February 14, 2002
OAC 252:4-7-7	Administrative completeness review	June 11, 2001	February 14, 2002
OAC 252:4-7-8	Technical review	June 11, 2001	February 14, 2002
OAC 252:4-7-9	When review times stops	June 11, 2001	February 14, 2002
OAC 252:4-7-10	Supplemental time	June 11, 2001	February 14, 2002
OAC 252:4-7-11	Extensions	June 11, 2001	February 14, 2002
OAC 252:4-7-12	Failure to meet deadline	June 11, 2001	February 14, 2002
OAC 252:4-7-13, except	Notices	June 11, 2001	February 14, 2002

<b>Table 1: Revisions to the Oklahoma SIP Proposed for Approval</b>			
<b>Section</b>	<b>Title</b>	<b>Effective Date</b>	<b>Submittal Date</b>
(a), which EPA will address in a separate action.			
OAC 252:4-7-14	Withdrawing applications	June 11, 2001	February 14, 2002
OAC 252:4-7-15	Permit issuance or denial	June 11, 2001	February 14, 2002
OAC 252:4-7-17	Permit decision-making authority	June 11, 2001	February 14, 2002
OAC 252:4-7-18	Pre-issuance permit review and correction	June 11, 2001	February 14, 2002
OAC 252:4-7-19	Consolidation of permitting process	June 11, 2001	February 14, 2002
<b>PART 3. AIR QUALITY DIVISION TIERS AND TIMELINES</b>			
OAC 252:4-7-31	Air quality time lines	June 11, 2001	February 14, 2002
OAC 252: 4-7-32, except (a) and (c)(1), which EPA will address in a separate action.	Air quality applications – Tier I	June 11, 2001	February 14, 2002
<b>Appendices for OAC 252: Chapter 4</b>			
OAC 252: 4. Appendix C, except the Tier I column, which EPA will address in a separate action.	Permitting process summary	June 11, 2001	February 14, 2002
<b>CHAPTER 100 (OAC 252:100) AIR POLLUTION CONTROL</b>			
<b>Subchapter 5. Registration, Emission Inventory and Annual Operating Fees</b>			
OAC 252: 100-5-1	Purpose	June 12, 2000	February 14, 2002
OAC 252: 100-5-1.1	Definitions	June 12, 2000	February 14, 2002
OAC 252: 100-5-2	Registration of potential sources of air contaminants	June 12, 2000	February 14, 2002
OAC 252: 100-5-2.1	Emission inventory	June 12, 2000	February 14, 2002
OAC 252: 100-5-2.2	Annual operating fees	June 12, 2000	February 14, 2002
OAC 252: 100-5-3	Confidentiality of proprietary information	June 12, 2000	February 14, 2002
<b>Subchapter 7. Permits for Minor Facilities</b>			
<b>PART 1. GENERAL PROVISIONS</b>			
OAC 252: 100-7-1	Purpose	June 25, 1998	February 14, 2002
OAC 252: 100-7-1.1	Definitions	June 11, 1999	February 14, 2002
OAC 252: 100-7-2, except (a) 2 <sup>nd</sup> sentence, which EPA will address in a separate action.	Requirement for permits for minor facilities	June 1, 2001	February 14, 2002
<b>PART 3. CONSTRUCTION PERMITS</b>			
OAC 252: 100-7-15	Construction permit	June 11, 1999	February 14, 2002
<b>PART 4. OPERATING PERMITS</b>			
OAC 252: 100-7-17	Relocation permits for portable sources	June 25, 1998	February 14, 2002
OAC 252: 100-7-18	Operating permit	June 11, 1999	February 14, 2002
<b>PART 9. PERMITS BY RULE</b>			

<b>Table 1: Revisions to the Oklahoma SIP Proposed for Approval</b>			
<b>Section</b>	<b>Title</b>	<b>Effective Date</b>	<b>Submittal Date</b>
OAC 252: 100-7-60	Permit by rule	June 11, 1999	February 14, 2002
OAC 252: 100-7-60.1	Cotton gins	June 11, 1999	February 14, 2002
OAC 252: 100-7-60.2	Grain elevators	June 11, 1999	February 14, 2002
Subchapter 8. Permits for Part 70 Sources			
EPA will address applicability to Minor NSR permitting under OAC 252:100-8 in a separate action.			
OAC 252: 100. Appendix H	DE MINIMIS FACILITIES	June 25, 1998	February 14, 2002

## **V. Incorporation by Reference**

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Oklahoma regulations as described in the Proposed Action section above. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the EPA Region 6 office.

## **VI. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of

Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: November 16, 2016.

**Ron Curry,**  
*Regional Administrator, Region 6.*

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